

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 20254 of 2000

Between:

Maheshwari 70 MM Theatre, Rep by its Manager,

I.Purnachandra Rao, Kachiguda X Road, Hyderabad.

..... PETITIONER

AND

-

- 1 The Commissioner of Police, Hyderabad.
- 2 The Additional Deputy Commissioner of Police, Task Force, West Zone,

(in the Commissioner of Police Office, Hyd)., Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus, declaring the proceedings of the 1st respondent in L&O/A3/862/2000, dt.12.10.200 imposing a fine of Rs.10,000/- in lieu of suspension of licence for a period of 7 days, as illegal, null and void.

Counsel for the Petitioner: MR.K.DURGA PRASAD

Counsel for the Respondent Nos.1 and 2: GP FOR HOME

The Court made the following :

ORDER:

The petitioner is a Cinema Theatre in Hyderabad. In this writ petition the proceedings of the first respondent dated 12.10.2000 are assailed. By the impugned proceedings, the first respondent imposed fine of Rs.10,000/- in lieu of suspension of licence. Aggrieved by the same, the petitioner filed the present writ petition.

On 27.2.2000 the Police Task Force conducted surprise check of petitioner's theatre and booked two cases against black-marketing of cinema tickets. The persons, who were selling tickets in black-market, were confessed that the tickets were procured through booking clerk on paying extra commission. Therefore, the Commissioner issued show cause notice on 20.7.2000. The petitioner submitted his explanation on 7.8.2000. After considering the explanation the impugned order came to be passed.

It is contended that the Task Force apprehended the black-marketees outside the premises of the theatre and therefore, the Management cannot be held responsible. Secondly, it is urged that the first respondent has no authority to impose penalty of Rs.10,000/-. According to the petitioner, if black-marketing is proved, the person indulging in black-market is liable to be punished for simple imprisonment for a term, which may extend to three months, or with fine up to one month, but penalty of Rs.10,000/- cannot be imposed.

The submission that the Task Force apprehended black-marketees outside the theatre premises and therefore Management is not responsible cannot be accepted. A reading of the impugned order would show that six months prior to the date of impugned proceedings, several cases against the black-marketees in the petitioner's theatre were registered. There has been as many as 15 cases, list of which is found in the impugned order itself. Even if the black-marketees are apprehended outside the theatre, if tickets being sold under black-market pertain to a particular theatre, it is always possible to draw an inference that the black-marketing is being carried on within the theatre, unless contra evidence is produced. In this case it was found by the Commissioner that two persons apprehended on 27.2.2000 confessed before the Task Force that they procured tickets through booking clerks on extra commission. Insofar as the second submission is concerned, the same has no merit.

The learned counsel also submits that the action of respondents in passing the impugned order is mala fide in that, when the management of the petitioner theatre did not oblige with the police officials for issue of tickets as and when requested, false cases have been foisted against the petitioner. This submission cannot be considered in view of absence of any pleadings to that effect. Further, when mala fide is attributed to a decision-maker, clear allegations should be made and endeavour should be made to prove such allegations. Both are absent in this case.

Sections 9 and 9(A) of the Andhra Pradesh Cinemas (Regulation) Act, 1955 (for short 'the Act') read as under.

9. **Penalties:-** If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used, in contravention of the provisions of this Act, or of the rules made thereunder, or of the conditions and restrictions upon or subject to which any licence has been granted under this Act, he shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues.

9(A) Penalty for black-marketing in the sale of tickets for admission to cinematograph exhibition: - (1) If the owner or person in-charge of a cinematograph exhibition either directly or through any other person, --

- i. sells or allows to be sold, the tickets for admission to cinematograph exhibition at any place other than the place licensed under this Act, or
- ii. sells or allows to be sold, such tickets at rates higher than the maximum rates fixed therefore, or
- iii. re-sells or allows to be re-sold such tickets at rates higher than the maximum rates fixed therefore either at the licensed premises or elsewhere—

he shall be punished with simple imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

(2) Whoever,--

- a. with a view to re-sell at rates higher than the maximum rates fixed therefore, purchases or keeps in his possession, the tickets for admission to Cinematograph exhibition in excess of the number normally required for use by his family members and not more than four of his guests; or
- b. sells or allows to be sold such tickets at rates higher than the maximum rates fixed therefore either at the licensed premises or elsewhere;

shall be punished with simple imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

(3) Notwithstanding anything in the Code of Criminal Procedure, 1973, an offence punishable under the section shall be cognizable.”

Section 9(A) carves out a cognizable offence in the event of black-marketing in the sale of tickets for admission into a cinema theatre. The offence under Section 9(A) is altogether different with the contravention of the provisions of the Act, the Rules made thereunder and the conditions of licence granted to the cinema theatre. The action taken by the first respondent is only under Section 9 of the Act, which empowers the licensing authority to impose fine of Rs.10,000/-. Indeed, under Section 10(2) of the Act if the licensee failed to comply with the any of the provisions of this Act, or of the Rules made, or any of the conditions of licence, it is open to the licensing authority either to revoke the licence or suspend the licence without prejudice to any other penalty, to which the licensee is liable

under the Act. Therefore, the action contemplated under Sections 9, 9(A) and 10(2) is different, and in a given case a licensee can be made liable for the action under all the provisions. In that view of the matter, the impugned order cannot be said to be illegal.

The Writ Petition, with the above observations, is accordingly dismissed. No costs.

V.V.S. RAO, J.

11th July, 2005

Js/bnr

To

- 1 The Commissioner of Police, Hyderabad.
- 2 The Additional Deputy Commissioner of Police, Task Force, West Zone,
(in the Commissioner of Police Office, Hyd)., Hyderabad.
- 3 Two CCs to G.P. for Home, High Court Buildings,
Hyderabad.
- 4 2 CD copies.